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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act -)	
Competitive Bidding)	
Narrowband PCS)	
)	
and)	
)	
Amendment of the Commission's)	
Rules to Establish New Narrowband)	GEN Docket No. 90-314
Personal Communication Services)	ET Docket No. 92-100

FURTHER COMMENTS OF
MOBILE TELECOMMUNICATION TECHNOLOGIES CORP.

Mobile Telecommunication Technologies Corp. ("Mtel"),^{1/} by its attorneys and pursuant to the Commission's Public Notice of December 21, 1994,^{2/} hereby submits further comments (the "Further Comments") in the captioned proceeding.^{3/}

^{1/} Mtel and its subsidiaries, including SkyTel Corp. ("SkyTel") and Destineer Corp. ("Destineer"), are Commission licensees providing a wide range of high technology wireless communications services. SkyTel holds a common carrier nationwide paging license and numerous common carrier non-network paging licenses. Destineer holds three narrowband nationwide PCS authorizations. It obtained one licensee via a Pioneer's Preference and two more by being the high bidder for two nationwide narrowband PCS authorizations at the Commission's July 25, 1994, auction. Accordingly, Mtel is well positioned to provide the Commission with informed comment in this proceeding.

^{2/} Public Notice entitled "Additional Comments Sought on the Commission's Narrowband PCS Entrepreneurial's Block Proposals" DA 94-1560, released December 21, 1994.

^{3/} Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, in PP Docket No. 93-253, Gen. Docket No. 90-314, and ET Docket No. 92-100, 59 Fed. Reg. 440558 (August (continued...))

By its Public Notice, the Commission sought comment regarding the effect of the Commission's recently completed narrowband regional PCS auction has had on its proposal to reallocate spectrum. By these Further Comments, Mtel points out how successful the Commission's recent narrowband auction was, and how such results serve to support the Mtel opposition previously voiced against adaption of the subject proposals. Accordingly, Mtel renews its urging that the Commission should not reallocate additional PCS spectrum on a wide-area market^{4/} basis at this time.

I. Background

Mtel has previously voiced its opposition to any proposal to reallocation of narrowband PCS spectrum at this time.^{5/} As Mtel pointed out, any narrowband PCS reallocation that increases the amount of narrowband spectrum assigned on a wide-area basis, either directly or through an enhanced opportunity for combinatorial

^{3/} (...continued)

26, 1994). In the Further Notice, Mtel comments were filed by September 16, 1994, and reply comments were filed by October 3, 1994.

^{4/} In its Comments, Mtel addressed additional allocations of nationwide spectrum. At issue here are both additional nationwide and regional allocations. Experience in the regional auction demonstrates that winning bidders are able to combine frequency awards so as to obtain de facto nationwide authorizations. Accordingly, in view of the similarity in problems that would stem from additional nationwide or regional allocations, Mtel's objection is to all "wide-area" market reallocations.

^{5/} See Mtel Comments and Reply Comments.

bidding, would be totally inappropriate, unjustified and illegal. Mtel Comments at 2. Mtel also explained that it would constitute a fundamental breach of the Commission's obligations to high bidders such as Mtel, who, in reliance upon the Commission's rules, committed huge amounts of money to acquire rights to spectrum at a fixed price.^{6/} Mtel also opposed the proposal to redesignate certain BTA response channels as larger license areas, to the extent that bidding would be limited only to those entities eligible to bid for entrepreneurs' block licenses, for these same reasons.

Since Mtel filed its Comments, the regional auction has been completed. It was, by any measure, a huge success. Winning bids totaled nearly one-half billion dollars.^{7/} Equally significant, a majority of the qualified bidders in that auction were Designated Entities ("DEs"), and all ten of the licenses for which bidding credits were available were won by DEs. Public Notice at 1.

^{6/} For high bidders such as Mtel, an increase in the amount of spectrum allocated for wide-area narrowband PCS could have a material adverse impact on the company itself, as well as its investors, both public and private.

^{7/} Public Notice entitled "Announcing the High Bidders in the Auction of 30 Regional Narrowband (PCS) Licenses; Winning Bids Total \$490,901,787" released November 9, 1994.

II. Discussion

A. Any Reallocation of Narrowband Spectrum Would be Wrong

As Mtel has previously advised the Commission, it is axiomatic that, in making equitable decisions, the Commission must consider the interests of all affected parties, as well as the public.^{8/} A substantive change in the allocation for narrowband PCS spectrum, after the auction for such spectrum has been held, would be fundamentally unfair to high bidders in prior narrowband PCS auctions, including Mtel. In reliance upon Commission rules and pronouncements, such bidders have expended, or committed to expend, well over one billion dollars on such spectrum. Most significantly, the material adverse impact that could be attached to an added wide-area market narrowband allocation would extend beyond the principals of the companies themselves and reach both public and private investors who have themselves acted in reliance of Commission actions.

Throughout its auction proceeding, the Commission has strived to establish a fair and rational auction process. That desire emanated in considerable part from a recognition that stability and predictability in the administrative process are necessary both to

^{8/} See, e.g., Memorandum Opinion and Order on Remand in ET Docket No. 93-266; Gen. Docket No. 90-314; and PP-6, PP-52, and PP-58; FCC 94-209, _____ FCC Rcd _____ (1994) ("Order on Remand"), at para. 16, where the Commission acknowledges its obligations in this regard and cites, with approval, McElroy Elec. Corp. v. FCC, 990 F.2d 1351, 1365 (D.C. Cir. 1993) for the same proposition.

comply with applicable law^{9/} and to maximize private investment. Were the Commission to change the narrowband PCS allocation so soon after the auctions, the public and the investment community would likely wonder what additional changes may follow in future auctions. Unless the public believes that there is an acceptable level of stability in the Commission's auction process, investment will undoubtedly be discounted to reflect the risk inherent in instability.

**B. There is no Demonstrated
Need for a Reallocation**

There are several other reasons why any reallocation of nationwide spectrum would be inappropriate. First, no showing of need for additional wide-area narrowband spectrum has been presented. Nor has there been any consideration of how of the need for spectrum in one size service area compares with that in another size of service area.^{10/}

^{9/} See, e.g., Reuters, Ltd. v. FCC, 781 F.2d 946, 950-951 (D.C. Cir. 1986) where Judge Starr reminded the Commission that "orderliness and predictability...are the hallmarks of lawful administrative action.

^{10/} As such, this proposal is markedly different from prior determinations in this proceeding which have been based upon reasoned analysis.

**C. The Results of the Narrowband
Regional Auction Demonstrate There
to be no Need for any Reallocation**

The results of the regional auction serve to support Mtel's prior comments^{11/} that the nationwide narrowband auction results were unique and should not themselves be used as a basis for revising a well-crafted allocation. First, the regional narrowband auction results demonstrate that the Commission's plan for establishing two DE frequency bands in each market works.^{12/} DEs were licensed in all DE blocks. Moreover, the prices bid at the narrowband regional auction demonstrate that licensee interest (as reflected by bid prices) has not been reduced despite the availability of only smaller market sizes.^{13/} Both of these developments lend further support to Mtel's submission that no demonstration of need has been made, and to its opposition to any reallocation of spectrum.

^{11/} See Mtel Comments at 9 where Mtel warned the Commission against changing its allocation plan based upon a single event (i.e., the nationwide auction), especially in view of the unique and complex nature of that auction.

^{12/} In addition to DEs prevailing in each of the spectrum blocks where full DE benefits were available, a third DE (Insta-Check Systems, Inc.), prevailed in a non-DE spectrum slot.

^{13/} For example, each of the nationwide 50/50 kHz channels was auctioned at \$80 million. But the total prices bid on both 50/50 kHz channels in the regional auction, where those authorizations were combined on a nationwide basis, were considerably higher than \$80 million, even after subtracting DE bidding credits from high bids.

III. Conclusion

In view of the above, Mtel submits that the results of the recent narrowband regional auctions provide no support for the Commission's proposal, and that indeed they serve to confirm Mtel's comments urging the Commission not to adopt such proposal.

Respectfully submitted,

MOBILE TELECOMMUNICATION
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January 13, 1995

CERTIFICATE OF SERVICE

I, Catherine M. Seymour, a secretary in the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 13th day of January, 1995, sent by first class U.S. mail copies of the foregoing "FURTHER COMMENTS OF MOBILE TELECOMMUNICATION TECHNOLOGIES CORP." to the following:

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